IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

FAO (MVA) No.238 of 2003

Judgment Reserved on: 27.4.2007

Date of Decision: 30.4.2007

Shyam Singh ……Appellant

Versus

Babu Singh and Ors. `…… Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting? No.

For the Appellant : Mr. Lalit Seghal, Advocate vice Mr. Harish Dod, Advocate.

For respondent No.1: Mr.V.S. Chauhan, Advocate

For respondent No.2: Mr. Deepak Bhasin, Advocate

Kuldip Singh, J

This appeal has been filed by claimant for enhancement against award dated 24.2.2003 passed by learned Motor Accident Claims Tribunal, Solan in M.A.C. Petition No.36 of 2000, awarding an amount of Rs.6,310/- with interest at the rate of 9% per annum from the date of filing of the petition till realization against respondents jointly and severally.

The case set up by the claimant in the Claim petition is that on 1.9.1998 he has loaded vegetables in truck No.HR-10-GA-0063 from Tikkar, Tehsil Theog to Chandigarh for sale. The truck rolled down near Chakki curve at Parwanoo, as a result of which claimant suffered the loss of vegetables and claimed Rs.35, 000/- compensation.

The respondents No.1 & 2 owner and driver of the truck respectively filed joint reply and have denied that accident took place due to the driving of truck by the driver. It has been denied that the

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W*hether reporters of Local Papers may be allowed to see the Judgment? yes*

Vegetables of the claimants were carried in the said truck at the time of accident. According to them they were not liable to pay the compensation.

The Insurance Company has submitted that truck being a goods vehicle, therefore, could not take passengers. The claimant was unauthorized and gratuitous passenger in the truck at the time of accident. No goods of the claimant were loaded in the truck and he can not be treated as a third party in the terms and conditions of the policy. The risk of a passenger or of the goods carried in the vehicle are not required to be compulsory covered under Sections 147 and 149 of the Motor Vehicle Act, 1988. It has also been submitted that the driver was not having valid and effective driving license. The amount claimed is exaggerated. On these grounds insurance company has submitted that claimant is not entitled to any compensation.

The learned Tribunal has held that the accident has taken place due to rash and negligent driving of the driver at the time of accident of the truck. The claimant is entitled to Rs.6,310/- along with interest at the rate of 9% per annum from the date of filing of petition till the date of payment. The respondents have been made liable to pay the compensation amount jointly and severally.

The claimant has filed the appeal against the impugned award and has claimed Rs.35,000/- compensation along with interest from the respondents.

I have heard the learned counsel for the parties and have also gone through the record.

Learned counsel for the claimant has submitted that the Tribunal has awarded compensation on the basis of G.Rs mark-A and C but has paid nothing towards apples contained in 36 boxes mentioned in G.R. mark-B. It has been submitted that the rates of the goods have been mentioned in mark-P on the pad of M/s. Pritam Singh Upkar Singh & Company. He has

submitted that clamant is entitled to Rs.35,000/- compensation along with interest at the rate of 18% per annum from the date of accident. The learned counsel for the owner of the truck has submitted that claimant is not entitled for any enhancement. In fact claimant has not proved the documents on the basis of which he is claiming compensation. The interest claimed by the claimant is highly excessive.

The learned counsel for the Insurer has submitted that the claimant is not entitled to any amount on account of alleged loss of goods in the accident. The goods are not required to be compulsory insured under Sections 147 and 149 of the Act. The claimant is not entitled to even amount of Rs.6,310/- compensation along with interest as awarded by the Tribunal. The Insurer could not file the appeal in view of quantum of award awarded by the Tribunal.

The learned counsel for the claimant has submitted that the Tribunal has erred in not paying the compensation to the claimant for goods covered in G.R. mark-B at the rates mentioned in mark-P. Marks- ABC have come in the statement of PW-2 Hira Nand Sharma. He has not proved these documents. He has not stated who has prepared marks- ABC. He has simply stated that the marks-ABC bears the signature of his Booking Clerk. In cross-examination he has deposed that he is illiterate and marks-ABC are not signed by him. He has not disclosed the name of Booking Clerk who has allegedly signed mark-ABC. The mark-ABC are photocopies. In cross-examination he has admitted that originals have not been shown to him. The statement of PW-2 Hira Nand Sharma that marks-ABC are signed by his Booking Clerk is not enough to prove the contents of these documents. Mark-P has also not been proved. Moreover, mark-P is dated 2 to 4-9/98 whereas the accident has taken place on 1.9.1998. The claimant has failed to make out any case for enhancement of compensation on the basis of mark-B read with mark-P.

The contention of the learned counsel for the claimant that the liability of Insurance Company on the basis of policy Ex.PW-2/A is unlimited for loss of goods has also no force. Moreover this contention requires no further discussion in as much as the claimant has failed to establish his claim for enhancement on facts as discussed above.

The submission of learned counsel for the Insurer that Insurer is not liable to pay any amount is only noticed to be rejected. The Tribunal has held that Insurer is liable to pay the award amount along with other respondents jointly and severally. The Insurer has accepted the award and has not challenged it in any manner. The submission of learned counsel for the Insurer that in view of the quantum of award Insurer could not assail the award by way of appeal has no force in as much as Insurer could have assailed the impugned award by way of some other proceeding but for reasons best known to the Insurer it has accepted the award. Therefore, Insurer cannot be heard to say that it is not liable to pay any amount to the claimant as held by the Tribunal. No case has been made out for interference by the claimant.

No other point was urged.

In view of above discussion, the appeal is dismissed and parties are left to bear their own costs.

(Kuldip Singh)
Judge

April 30 , 2007
(sks)